STATE OF MICHIGAN

COURT OF APPEALS

FSS POTTED PLANTS, L.L.C., and FRANK SMITH & SONS, d/b/a E & A ENTERPRISES,

Plaintiffs-Appellants,

v

AMERICAN AGRISURANCE, INC. and AMERICAN GROWERS INSURANCE COMPANY,

Defendants/Cross-Defendants-Appellees,

and

MICHAEL GAYNIER and SPARTAN INSURANCE AGENCY, L.L.C.,

Defendants/Cross-Plaintiffs.

UNPUBLISHED
February 2, 2006

No. 257053
Monroe Circuit Court
LC No. 02-015651-CK

Before: Meter, P.J., Whitbeck, C.J., and Schuette, J.

PER CURIAM.

Plaintiffs FSS Potted Plants, L.L.C. and Frank Smith & Sons, doing business as E & A Enterprises, who describe themselves as a family-owned grower of nursery stock and flowers, appeal as of right from the circuit court's orders granting summary disposition to defendants American Agrisurance, Inc. (Agrisurance) and American Growers Insurance Company (Growers) and dismissing the case. We affirm. We decide this appeal without oral argument.[1]

I. Basic Facts And Procedural History

Growers issued an insurance policy against frost damage to FSS Potted Plants. American Agrisurance, Inc., marketed the policy. Plaintiffs suffered a cold weather loss, and a dispute arose concerning whether plaintiffs were operating in a location that rendered them ineligible for

[1] MCR 7.214(E).

coverage. The controversy was resolved in arbitration on the ground that FSS Potted Plants, being the insured party, was never fully formed into a legal entity and thus suffered no loss and had no claim. The award was not appealed. Instead, plaintiffs filed suit in circuit court, asserting claims of breach of contract and negligence. The trial court granted summary disposition in favor of Growers and Agrisurance on the ground that those claims had been decided in arbitration.[2]

II. Summary Disposition

On appeal, plaintiffs challenge only the dismissal of Agrisurance, whom they describe in their brief as "the marketing arm of Growers." Plaintiffs argue that Agrisurance was not party to, and that claims involving it were not decided by, the arbitration.

A. Standard Of Review

We review a trial court's decision on a motion for summary disposition de novo as a question of law.[3] The applicability of a legal doctrine likewise presents a question of law calling for our review de novo.[4]

B. Res Judicata

Decisions resulting from arbitration are res judicata in connection with any subsequent cause of action.[5] "Under the doctrine of res judicata, 'a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action.'"[6] "The doctrine operates where the earlier and subsequent actions involve the same parties or their privies, the matters of dispute could or should have been resolved in the earlier adjudication, and the earlier controversy was decided on its merits."[7]

Substantial identity, not necessarily perfect identity, is sufficient for res judicata to apply.[8] "Regarding private parties, a privy includes a person so identified in interest with another that he represents the same legal right, such as a principal to an agent, a master to a servant, or an indemnitor to an indemnitee."[9] Plaintiffs' description in their complaint of

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[2] Claims and cross-claims involving the remaining defendants Michael Gaynier and Spartan Insurance Agency, L.L.C. have been settled, and are not at issue in this appeal.

[3] *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999).

[4] *James v Alberts*, 464 Mich 12, 14; 626 NW2d 158 (2001).

[5] See *Hopkins v Midland*, 158 Mich App 361, 370; 404 NW2d 744 (1987).

[6] *Wayne Co v Detroit*, 233 Mich App 275, 277; 590 NW2d 619 (1998), quoting Black's Law Dictionary (6th ed, 1990), p 1305.

[7] *Wayne Co*, *supra*.

[8] See *Peterson Novelties, Inc v Berkley*, 259 Mich App 1, 12; 672 NW2d 351 (2003).

[9] *Id*. at 12-13.

Agrisurance as "the marketing division for" Growers plainly describes a master-servant, or principal-agent, relationship. Underscoring this obvious overlap in identity is the fact that the letter establishing the agreement to the underlying arbitration was prepared on Agrisurance's letterhead. We conclude that there is sufficient identity of parties for Growers' participation in arbitration to bind Agrisurance as well.

Concerning identity of claims, the Michigan Supreme Court "has taken a broad approach to the doctrine of res judicata, holding that it bars not only claims already litigated, but also every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not."[10] However, "An arbitrator . . . can only bind the parties on issues that they have agreed to submit to arbitration."[11] In this case, plaintiffs' contract claim was obviously decided by arbitration, which concluded that FSS Potted Plants had no rights under the policy for want of personhood for that purpose. Plaintiffs neither state nor imply that any contract existed between themselves and Agrisurance apart from insurance policy issued by Growers.

C. Negligence

Plaintiffs assert that Agrisurance held itself out as having the expertise to advise them on their insurance needs but in fact negligently induced them to obtain a policy from which they could collect no benefits. These assertions bear on the question whether plaintiffs were operating in a location eligible for frost coverage, but the arbitrator's conclusion that FSS Potted Plants failed to establish itself as a valid legal entity for purposes of suffering a loss, and claiming insurance benefits, rendered other contract-avoidance issues moot. Plaintiffs cite no authority for the proposition that a contracting party has a duty to ascertain a prospective contract partner's legal eligibility to receive benefits under the contract, and to advise that prospective partner accordingly.

Moreover, by pleading damages in negligence as the result of being induced to enter a contract that in fact delivered no benefits, plaintiffs attempt to pursue a contract claim under the rubric of negligence. A contracting party's wrongful inducement of another to enter the contract might be grounds for the latter to void the contract, demand return of consideration, or assert an estoppel theory against the wrongful inducer's defenses, but plaintiffs cite no authority for the proposition that such inducement is grounds for recovering damages in negligence. This is a contract case, subject to contract remedies. Therefore, we conclude that plaintiffs' claim that Agrisurance wrongfully induced them to enter and rely on the contract fell within the ambit of the arbitration.

We affirm.

/s/ Patrick M. Meter
/s/ William C. Whitbeck
/s/ Bill Schuette

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[10] *Adair v Michigan*, 470 Mich 105, 121; 680 NW2d 386 (2004).

[11] *Hopkins, supra* at 370.